

212/656

Remarks

Claims 1-5, 7-21, 23-32, 35 and 37-53 remain pending in the application. Claims 54 thorough 57 are cancelled in response the restriction requirement

The claims have been amended to cure the indefiniteness identified by the examiner regarding the use of the permissive terms "may be" and "can be." Also, the claims have been amendment to avoid the "automatically conducting" and/or "infinitely refreshed" terms identified as a source of indefiniteness.

The office action rejects the claims as obvious over Zampese, Purchase management system and method, U.S Patent 6,104,650 (Jan. 11, 2000) under the assertion, without more, that whatever Zampese does not disclose would have been obvious, including the lengthy list of modifications listed by the examiner. The rejection fails to state a prima facie case of obviousness, as it fails to provide a motivation to make the claimed modifications. The rejection merely states that it would have been obvious to do so, and though it invokes the terms efficiency, user friendliness and security, it is impossible to argue that these factors, even if evident from the claimed systems, would a priori motivate one to modify the prior art to obtain the claimed systems. As stated in the office action, Graham v. John Deere requires more. Graham v. John Deere requires identification of some pre-existing motivation to combine prior art references to achieve the claimed combination, not just address some of the same benefits provided by the claimed combination. The mere statement that, in any one

212/656

persons opinion, a given element (in this case, a complex combination of numerous elements) does not accomplish the legally required inquiry. There is no rational basis for application of such bald assertions of obviousness, and thus the failure to examine the application pursuant to *Graham v. John Deere* deprives the applicant of his right to have his application considered under uniform standards on par with all other applicants. Accordingly, the rejection should be withdrawn absent some identification of a motivation to make the claimed combination.

The rejection also ignores limitations in the claims which require preventing the system from re-using spent codes, directly contrary to the teaching of *Zampese*, which permits recycling of codes. This has not been addressed by the previous office actions.

The Examiner's reference to an e-mail system which stores deleted messages is not understood, as it has no bearing on the claim element of retaining used codes in an active state of service. Used codes would typically be discarded in a secure access system, and official notice might be taken of common proscriptions against re-using old password.

212/656

Conclusion

This response has addressed all of the Examiner's grounds for rejection. The rejections based on prior art have been traversed. Reconsideration of the rejections and allowance of the claims is requested.

Date: December 28, 2004

By:



---

K. David Crockett, Esq.  
Reg. No. 34311